

REMARKS

Reconsideration and allowance in view of the foregoing amendments and the following remarks is respectfully requested. Upon entry of this Amendment, claims 5-7, 11, 12, 16, and 21-35 will be pending in the present application. Claims 1-4, 8-10, and 17-19 have been cancelled. Claims 34 and 35 were unilaterally withdrawn from consideration by the Examiner.

In the previous Office Action, the Examiner stated that claims 34 and 35 are directed to a combination of a baby bottle and a container capable of holding the baby bottle and maintaining the baby bottle within the compartment of the container. The Examiner concluded that the invention recited in claims 34 and 35 was independent and distinct. The Applicant respectfully disagrees with the Examiners conclusion. There are two criteria for a proper restriction requirement between inventions: The inventions must be independent and distinct as claimed and there must be a serious burden on the examiner if restriction was not required. In this case, neither criterion has been met by the Examiner.

The claims are directed to different aspects of related inventive concepts. Therefore, claims 34 and 35 are not independent. With respect to distinctiveness, a restriction requirement is only proper when the inventions as claimed do not overlap in scope, are not obvious variants, and are not capable of use together or have materially different design, mode of operation, function, or effect. The present inventions, as claimed substantially overlap in scope and could be used together. Furthermore, the Examiner has presented no evidence to establish that considering claims 34 and 35 would present a substantial burden. As noted at M.P.E.P Section 806.05(j), a conclusion of excessive burden may be supports by substantiating evidence (i.e., separate classification, status in the art, or field of search). The Examiner did not provide

any such evidence, and has thus failed to establish a *prima facie* case that restriction was proper. Accordingly, reconsideration of the present restriction requirement is requested.

Claim 12 was rejected under 35 U.S.C. § 112 due to depending from itself. Claim 12 was amended to depend from claim 10. Reconsideration is requested.

Claim 30 was rejected under 35 U.S.C. § 112 as lacking antecedence for the limitation “each recess.” This limitation was deleted and replaced with the limitation “coupling cavity” which has proper antecedence. Reconsideration is requested.

Claim 31 was rejected under 35 U.S.C. § 112 as lacking antecedence for the phrase “said latch.” Claim 31 was amended to provide the appropriate antecedent basis for this limitation. Reconsideration is requested.

Claims 5-7 and 24 stand rejected under 35 U.S.C. § 103 as being unpatentable over Dooley in view of Lytle and Ragland.

Dooley discloses a beverage can cartridge storage device that may be inserted into a modified cooler. The cooler includes a sloped section which is sloped from the back of the cooler towards the front. Cans are then inserted into the cartridge such that they may roll down the sloped section. To keep the cans cool, ice may be packed around the cartridge storage device.

Dooley, however, does not teach or in any way suggest several unique aspects of the present invention. For instance, Dooley describes a device with a beverage can cartridge which may be filled with ice to keep the cans cool (Col. 1, ll. 53-56). In the invention contemplated by Dooley, it would be counter productive, and thus nonobvious, to heat one end of the beverage container and cool the other end. Moreover, since the entire area around the sides

and over the top of the cartridge is open, this device would be incapable of thermally isolating the two compartments. If anything, Dooley teaches away from the Applicant's invention. Independent claims 5 and 24 each recited that "each compartment is substantially thermally isolated from one another so that different relative temperatures may be maintained in each compartment." Since Dooley does not teach this feature, independent claims 5 and 24, as well as all claims dependent thereon, are deemed allowable.

Secondly, Independent claim 5 recites that the liner includes "at least two latches to releasably secure the liner within the container body and that the latches are located on oppositely disposed upstanding walls. This allows the liner to be pulled straight up and out of the container body. In contrast, Dooley, as noted by the Examiner, does not disclose a latch and certainly not two releasable latches located on oppositely disposed upstanding walls of a liner. Lytle may disclose a plurality of latches located on upstanding walls. However, these "upstanding walls" are located on closure member 23 which is a bottomless, square frame that fits within the body member 11. As amended, claim 5 recites that the liner includes a bottom wall. While the closure member of Lytle may have a plurality of latches, it does not have bottom surface and thus not a liner as defined in claim 5. Similarly, Ragland may disclose a tray 30 which has upstanding walls and a bottom wall, but it does not have a plurality of latches such that the liner may be easily removed from the insulating layer. The Applicant contends that it would not be obvious to combine the references as suggested by the Examiner. Lytle discloses a container with a lid for holding umbrellas, prints, maps, etc. Ragland discloses a car seat snack tray. Neither of these devices are within the applicant's field of endeavor (insulated storage containers). Moreover,

neither device is reasonably pertinent to the problem sought to be solved by the present invention. It simply would not be obvious to combine a car seat tray, a container for elongate objects, and a beverage can cartridge to arrive at the Applicant's invention. Reconsideration is requested.

Claims 11, 12, 16, 21-23, 30, 33 stand rejected under 35. U.S.C. § 103(a) as being unpatentable over Dooley in view of Gale.

The Examiner contends that Dooley discloses the applicant's invention as recited in claims 11, 12, 16, 21-23, 30, 33 except that Dooley does not disclose recesses on the underside of a lid aligned with a corresponding cavity. While true, Gale does not supplement the deficiencies found in the Dooley reference as noted above. Specifically, neither Dooley nor Gale disclose an elongate partition that separates the insulating layer into two compartments so that different relative temperatures may be maintained in each compartment. With respect to the device described by Dooley, it would be counter productive, and thus nonobvious, to heat one end of the beverage container and cool the other end. Moreover, since the entire area around the sides and over the top of the cartridge is open, this device would be incapable of thermally isolating the two compartments. There is simply no motivation within the art to make the Examiner's proposed modification. If anything, Dooley teaches away from the applicant's invention. Similarly, Gale describes a shipping carton with inserts that engage the top and bottom of the bottles. Yet, as with Dooley, Gale does not disclose an elongate partition to thermally isolate two compartments. This reference also teaches away from the Applicant's

invention. It would not be desirable to have differing temperature regions within a shipping container holding glass bottles. Reconsideration is requested.

With respect to claims 12 and 33, the Examiner states that it would be obvious to modify the bottle bottom recess engaging portion to be a domed portion. The Applicant disagrees with the Examiner's conclusion. This feature of the Applicant's invention is not taught or even suggested by the references of record. There is no motivation within the art to make the Examiner's suggested modification. If anything, Gale teaches away from such a modification. The insert is placed beneath the top flaps of a shipping container. The goal of the Gale reference was to provide a secure system for holding the bottles in an upright orientation. Placing a domed portion on the top of the insert would frustrate its ability to securely abut with the bottom of the adjacent flap. Modifying Gale as suggested by the Examiner would not be obvious. Accordingly reconsideration of the rejection to claims 12 and 33 is requested.

With respect to the Examiner's rejection of claims 16, 21-23 and 30 as well claims 25-29, and claim 26, all of these claims are directed to different aspects of the Applicant's unique coupling cavity. Rather than present any reference to support the Examiner's position, the Examiner has taken notice that it would simply be obvious to invent this aspect of the Applicant's invention. The Applicant contends that the Examiner has in no way established a *prima facie* case of obviousness regarding these claims. If the Applicant's invention, as recited in these claims, truly was obvious, as asserted, then there should be some supporting references within the Applicant's field of endeavor or an analogous field. No such supporting reference has

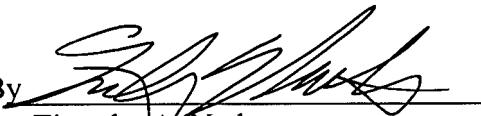
been identified by the Examiner. Accordingly, reconsideration of the rejections to these claims is requested.

This response is being filed within the extended three-month statutory response period which expires on September 19, 2007. The enclosed check includes the fees for the present request for continued examination as well as the extension fee.

All objections and rejections have been addressed. It is respectfully submitted that the present application is in condition for allowance and a Notice to that effect is earnestly solicited.

Respectfully submitted,

By


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